

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20, SUBREGION 37

HONOLULU RESOURCE RECOVERY VENTURE

Employer

and

Cases 37-RC-3907  
37-RC-3908

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 1260,  
AFL-CIO.

Petitioner

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a Delaware corporation, is engaged in the non-retail business of processing waste and producing electric energy. During the 12-month period ending July 31, 1999, the Employer purchased and received goods and supplies valued in excess of \$50,000 directly from points outside the State of Hawaii. Based on the parties' stipulation to such facts, I find

that the Employer is engaged in commerce and that it will facilitate the purposes and policies of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. The parties stipulated, and I find, that there is no contract bar to this proceeding.

5. In Case 37-RC-3907, the Petitioner seeks to represent a unit comprised of employees who work 12-hour shifts at the Employer's power block facility located at Kapolei, Hawaii including control room operators, turbine operators, boiler operators, pollution control operators, auxiliary boiler operators, ash system operators, and auxiliary air pollution control operators; excluding all other employees, guards and supervisors as defined in the Act.

In Case 37-RC-3908, the Petitioner seeks to represent a separate unit comprised of the lead IC& E (instrument control & electrical) technician and six IC&E techrider employees employed by the Employer at its Kapolei, Hawaii, location; excluding all other employees, guards and supervisors as defined in the Act.

The Employer contends that the petitioned-for units are inappropriate and that the only appropriate unit is a single wall-to-wall unit comprised of all employees employed at its Kapolei facility; excluding administrative, office clerical, management and supervisory employees.

Stipulations. The parties stipulated, and I find, that the individuals in the following positions should be excluded from the unit as statutory supervisors: the facility business manager, chief engineer, environmental compliance specialist, results engineer, safety/training supervisor, maintenance superintendent, plant engineer, operations supervisor (power block facility), operations supervisor (waste processing facility),

mobile equipment supervisor, combustion/corrosion specialist, maintenance superintendent, shift supervisors (power block facility), shift supervisors (waste processing facility), and haul shift supervisor.

The parties also stipulated, and I find, that all employees under the facility business manager should be excluded from the unit, including the senior secretary, administrative assistant, accountant, purchasing/warehouse secretary, receptionist/secretary, purchasing clerk, senior inventory/stores coordinator, accounting clerk, accounts payable clerk, weighmasters, purchasing clerks, and inventory/stores coordinators.

Background. The Employer employs about 150 persons at its Kapolei, Hawaii facility. Its primary function is to receive and process refuse for the Island of Oahu, Hawaii. The Employer's facility and operations are divided into a waste processing plant and a power plant which is also referred to as the power block. The Employer receives approximately 100% of all municipal solid waste and 65% of all solid waste generated on Oahu. It incinerates combustible refuse, thereby reducing the volume of refuse sent to landfills by about 90%. The Employer's waste processing plant processes refuse into combustible materials by removing non-combustible and/or unacceptable materials, including ferrous materials, radioactive materials, medical and pathologic waste, construction rubble, green waste and cardboard. The remaining combustible waste is shredded into fuel-sized parts and burned in furnaces. This incineration process generates steam that runs a steam generator which in turn drives an electric generator to produce electrical power. The electric power produced as a by-product of the Employer's waste processing is used by the Employer and is also sold to the Hawaiian Electric Company. As an independent producer of electrical power, the Employer provides about 5 to 5.5% of the energy consumed on the Island of Oahu.

Managerial and Supervisory Hierarchy. The overall supervision of the plant is by the facility manger for operations and the facility business manager. As noted above, the parties stipulated that the facility business manager is a statutory supervisor and that all employees working under his supervision should be excluded from the unit as office clerical or administrative type employees.

The facility manager for operations has several supervisors/managers under him, including Chief Engineer W.E. McCraw, who oversees the waste processing facility, the power block facility and the mobile equipment operation. Each of these operations has its own separate operations supervisor and shift supervisors. The employees sought by the petition in Case 37-RC-3907 all work under the power block facility and thus report to the shift supervisors who in turn report to the operations supervisor for that facility, who in turn reports to the chief engineer. Also reporting directly to the facility manager is the results engineer who has the IC&E technician and IC&E techriders sought by the petition in Case 37-RC-3908 working directly under him; the plant superintendent who has a maintenance supervisor and lead mechanics and mechanics working under him; and the plant engineer who has a lead painter, painter/utility workers and bottom ash metals recovery system (BAMRS) operators working under him.<sup>1</sup>

The Waste Processing Plant. The waste processing plant receives waste Monday through Saturday. It is scheduled to operate during the first two shifts Monday through Friday and during a 10-hour shift on Saturday. The waste processing plant consists of a receiving and storage area which includes a central scale house where incoming trucks are weighed and scanned for radiation; a tipping location where the refuse hauled in by trucks is dumped; an inspection/picking station where unacceptable

materials are removed; and two parallel conveyor lines that transport waste through shredders to reduce their size. Magnetic separators remove ferrous metals from the waste and separation units divide the waste into sand, glass and dirt; small combustible products; and paper and plastic materials. Non-combustible materials that are separated out are hauled to the appropriate recycling center or taken to a landfill by the Employer as a part of this process. Materials are also stored at the Employer's facility for later use.

The waste processing plant is supervised by Operations Supervisor R. C. Sandy and by three shift supervisors. Employed in the waste processing plant are 3 control room operators who operate the control room of the waste processing facility; 12 process auxiliary operators who have been with the Employer for about 2 years; entry level utility operators who are non-permanent employees; and approximately 16 equipment operators who operate all of the Employer's mobile equipment on the site for both the waste processing and power plant facilities. The equipment operators move municipal solid waste when it is first received at the plant; load ferrous materials to be hauled away; and haul the ash produced by the power block plant. On a daily basis, the equipment operators interact with employees in both the waste processing and power block plants. They report to both the power block supervisors for coordination of their work for the power block facility and to the waste processing supervisors for their other duties related to waste processing.

The waste processing employees work an eight-hour shift five days a week and on Saturday they work a ten hour shift. Their work schedule coincides with the delivery of refuse by outside entities on Oahu. The waste processing facility processes enough

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<sup>1</sup> Also reporting to the facility manager for operations are the environmental compliance specialist and the safety/training supervisor. There are no employees at issue herein under either of these

waste in its 16-hours of operation each day and its ten hour schedule on Saturday to run the power block plant facility 24 hours a day seven days a week.

The Power Block (Energy) Plant. The combustible materials that have been separated out by the waste processing plant are ultimately fed into two steam generators (boilers) to create electrical power. These generators have a bottom and fly ash handling system and boiler emission controls to limit the amount of pollution caused by the boiler's operation. Control of the energy plant is from a control room located adjacent to the boilers. The energy plant operates 24 hours a day 7 days a week. The operators of the energy plant work on 12-hour shifts to provide the 24-hour a day operation. Chief Engineer McCraw testified that this shift arrangement resulted from a vote of employees and that previously, the operators had worked other types of shifts to accommodate the need to provide continuous power to the Hawaii Electric Company.

In the power block facility, the Employer has an operations supervisor and 4 shift supervisors whom the parties have stipulated to be excluded from the unit as statutory supervisors under the Act. The power block facility has seven types of operators, including approximately four control room operators; four turbine operators; four boiler operators; four air pollution control operators; four auxiliary boiler operators; four air pollution control operators; four ash system operators; and one lab technician. All of these employees work in close proximity in the power plant. The control room operators in the power plant are required to have an ASME QRO certification and to meet national standards. The record contains no details regarding these standards. However, there are no other state or local certifications required for their job. The four ash system

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supervisors.

operators operate the ash tower and related equipment.<sup>2</sup> The air pollution control operator and the auxiliary air pollution control operator assistant work with all of the Employer's air pollution control equipment, such as its "scrubber" or electrostatic precipitator. Although there is no indication in the record that the Employer requires more than a high school education of any of these types of employees, the record reflects that it seeks out the most competent and skilled individuals that it can obtain for these positions and that they receive special training in order to perform their functions.

The Lab Technician. Also working in the power block plant with the above employees is the lab technician. According to Chief Engineer McCraw, the lab technician previously reported to the environmental specialist but now reports to the power block supervisors. Unlike the other petitioned-for employees in the power block plant, the lab assistant does not work a 12-hour a day schedule. Rather, he works 8 hours a day five days a week from 7 a.m. till 3:30 p.m. He is an hourly paid employee. No party appears to contend that the lab assistant is a technical employee and the record does not contain any evidence in this regard.

The Mobile Equipment Department. The mobile equipment department has its own separate supervisor who reports to Chief Engineer McCraw. This department provides the fleet of vehicles, drivers and maintenance for all of the Employer's equipment, including all heavy mobile equipment used for both the power and process plants. Included in this department are truck/trailer operators, utility mechanical operators, tire repair technicians, and mobile equipment mechanics. The Employer does

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<sup>2</sup> McCraw testified that about two weeks before the hearing, the Employer had announced its intention to transfer the ash system operators to work with the bottom ash metals recovery system (BAMRS) operators under the supervision of the plant engineer. However, the record does not disclose whether this transfer had actually occurred as of the date of the hearing.

all of the hauling of the by-products from both the power block and the waste processing plants to recycle centers and landfills.

The Maintenance Department. The maintenance department is headed by the maintenance superintendent who reports directly to the facility manager for operations. It also has a maintenance supervisor. The three lead mechanics and 18 mechanics in the maintenance department provide maintenance for both the processing plant and the power plant working on 8-hour shifts to cover a 7 days a week, 24 hours a day operation. The maintenance department also provides “reinforcement” for the fleet if necessary. Under the maintenance superintendent, the Employer also employs one planner who plans and executes work orders and goes after parts as support to the IC&E and maintenance employees. He is paid on an hourly basis.

The Plant Engineering Department. Under a separate supervisor who reports to the facility manager called the plant engineer, the Employer also employs a lead painter and two painter utility workers who paint its facilities, trucks, equipment etc., and also build scaffolds, for both the waste processing and power plant side. Four bottom ash metals recovery system (BAMRS) operators also report to the plant engineer. They are responsible for the recovery of the metals and nonferrous metals (e.g., aluminum, etc) from the bottom ash recovery system used in the power plant. Of these four employees, two were hired and two were transferred from the process side of the plant. About two weeks before the hearing, the Employer announced that it was transferring the 4 ash system operators to work under the plant engineer so that they could work in coordination with the bottom ash metals recovery system operators. According to the Employer’s witness, Chief Engineer McCraw, prior to this transfer, these employees often substituted for one another. The record does not contain any documentation or other evidence quantifying how often such substitutions occurred. Nor does it show



whether the work location of the ash system operators will change as a result of the transfer.

The Results Engineering Department. As indicated above, the parties stipulated that the Employer's results engineer is a statutory supervisor. He reports directly to the facility manager for operations. Reporting to the results engineer are one lead IC&E (instrument control and electrical) technician and approximately 6 IC&E techriders. The IC&E techriders perform all the electrical and electronic troubleshooting and repairs and project installations for the Employer. On a daily basis, they also perform checks on the pollution control system and calibrate the emissions monitoring system and fire protection system. They work in both the power and waste processing plants. According to McCraw, the Employer does not require the IC&E lead technician or the techriders to be licensed electricians but does hire persons with a background in electronics or electrical work for these positions. The Employer has a multi-step training program that these employees go through in order to reach the full electronic technician level. McCraw testified that federal regulations or the NEC (National Electric Code) requires that anyone who works on an electrical system be trained in that system and certified by a qualified technician. McCraw further testified that the IC&E lead technician and IC&E techriders with the maintenance employees work on various projects such as performing wire pulls to lay electrical and other conduit.

Skills Required of Employees. All employees hired by the Employer are required to have a high school degree or its equivalent. The record does not disclose that the Employer requires any other qualifications although Chief Engineer McCraw testified that it seeks the most qualified applicants it can hire. As indicated above, the control room operator in the power block is required to have the ASME QRO national certification. No party appears to contend, however, that the power block control room operators are

technical employees who should be placed in a separate unit from other employees and the record contains no evidence that any educational or technical school training is required of the power block control room operators. The IC&E technicians and IC&E techriders are required to have some kind of electrical or electronics background and go through an Employer program in order to become electronic technicians. However, the record does not indicate that anything beyond a high school degree or its equivalent is required of the IC&E employees or any other employees hired by the Employer.

Interchange. McCraw testified that two times each year, the Employer shuts down to perform maintenance and that during these periods employees are cross-assigned from one area to another in order to handle maintenance matters. For example, operators have done repairs on the plant during this period. As indicated above, IC&E employees sometimes pull wire with maintenance employees. Ash system operators and BAMRS operators apparently substitute for each other but the record does not show how frequently this actually occurs. The record also does not indicate how frequently employees from the processing plant work in the power plant or vice versa or how often they substitute for one another.

Hours of Work. As noted above, the power block employees petitioned-for in Case 37-RC-3907 are the only 12-hour shift/7 day a week employees. Also, as indicated above, the lab technician who works in the power block does not work this 12-hour schedule. The waste processing employees work 8-hour shifts 5 days a week, and one 10-hour shift on Saturday,. The IC&E technician and techriders work from 7 a.m. to 3:30 p.m., and the night shift IC&E techrider commences work at 10 p.m.

Wages and Benefits. The record reflects that the Employer has an integrated time sheet and payroll system for all of its employees. Shift supervisors sign off on the

timesheets and McCraw verifies them for the power block, waste processing facility and mobile equipment department.

Control room operators with QRO certifications in the power block are paid in the \$21 to \$22 an hour range. Control room operators in the waste processing plant are paid in a range of from \$19 to \$21 an hour. The ash system operators are paid a starting wage of about \$16 an hour. Mechanics and IC&E technicians are paid \$21 to \$23 an hour. All employees in the power block and waste processing plants receive the same benefits. The record does not disclose the pay rates of employees in other classifications.

Breakrooms. The maintenance and waste processing plant employees use a breakroom located in the Employer's main processing plant because it is closer to their locker rooms. The other lunchroom/breakroom is closer to the power block and is primarily used by power block employees. It is also used for safety meetings, etc.

Bargaining History. The parties stipulated, and I find, that there is no history of collective bargaining among the Employer's employees. The Employer introduced a collective-bargaining agreement between IUOE Local 547 and what was represented by the Employer's counsel as a "sister" facility to the Employer located in Detroit, which included both process, power block and maintenance employees. The record also contains another collective-bargaining agreement between IBEW Local 160 and an entity in Minneapolis, Minnesota which the Employer asserts is similar to the Employer herein, that includes both power block and process employees.

Analysis. Section 9(b) of the Act provides that the Board "shall decide in each case whether the unit appropriate for the purposes of collective-bargaining shall be the employer unit, craft unit, plant unit, or a subdivision thereof." In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate."

P.J. Dick Contracting, 290 NLRB 150, 151 (1988). The Board does not compel a petitioner to seek any particular appropriate unit. As the Board stated in Overnite Transportation, 322 NLRB 723 (1996), “The Board’s declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective-bargaining.” As stated by the Board in Morand Bros., Beverage Co., 91 NLRB 409, 418 (1950), enf’d on other grounds, 190 F.2d 576 (7<sup>th</sup> Cir. 1971): “There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be ‘appropriate.’” Thus, in Overnite Transportation, supra, the Board noted that “[a] union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with that requested unit does not exist.” P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963).

The test applied by the Board to determine whether employees share a community of interest with other unit employees is whether there are (1) differences or similarities in wages, compensation and benefits; (2) whether that employee shares common supervision with other unit employees; (3) whether that employee has similar hours of work as other unit employees; (4) differences or similarities in qualifications, training and job skills; (5) job functions; (6) frequency of contact with other unit employees; (7) functional integration and interchange with other unit employees; and (8) bargaining history. See P.J. Dick Contracting, Inc., 290 NLRB 150, 151, 1988); Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

In the instant case, the record reflects that the petition in Case 37-RC-3907 seeks a unit comprised of all power block facility employees who work a 12-hour shift at the Employer’s facility, including approximately four control room operators, four turbine

operators, four boiler operators, four air pollution control operators, four auxiliary boiler operators, four auxiliary air pollution control operators, and four ash system operators. These employees all work in the same physical plant and under the same shift supervisors and operations supervisor. They work in a facility and a department and under supervision that are separate and distinct from that of other employees of the Employer. They perform functions which are integrated to the operation of the power plant, have regular daily contact with each other and use the same breakroom. Although the record does not disclose the pay rates of all employees in this petitioned-for unit, it appears that they have comparable rates of pay and are eligible for the same fringe benefits. They also work on a schedule that is different from that of any the Employer's other employees. While the record establishes that the petitioned-for employees have some contact and interchange with certain other employees, the record does not establish that such contact or interchange is of a level sufficient to overcome their community of interest separate and apart from the other employees. In sum, the record supports a finding that the employees who operate the power plant have a sufficient community of interest to constitute an appropriate unit.<sup>3</sup> I do not find that the evidence that a sister facility of the Employer and a similar facility at other locations have collective-bargaining agreements covering both power block and waste processing employees provides a sufficient basis for a different conclusion in the instant case. Each

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<sup>3</sup> In reaching this conclusion, I am mindful of Board precedent establishing a strong preference for system wide units in the public utility industry. See *Peco Energy Co.*, 322 NLRB 1074 (1997) and cases cited therein. However, while the Employer processes waste and is an independent electric energy producer, it is not a public utility. Moreover, as indicated above, the Employer supplies only about 5% of the electric power used on the Island of Oahu to the Hawaii Electric Company. In these circumstances, I do not find that the *Peco* line of cases to be applicable to the determination made herein. Furthermore, assuming *arguendo* that this line of cases were applicable, the unit determination made herein comports with clear administrative segments of the Employer's operation and is consistent with Board precedent under the circumstances of this case.

case must be determined based on the particular facts disclosed and the determination herein is supported by the record.

As indicated above, the record reflects that two weeks before the hearing in this case, the Employer announced that it was transferring the ash system operators who are part of the petitioned-for group at the power block to work with the BAMRS operators under the supervision of the plant engineer. However, it is unclear as to whether this transfer had occurred as of the date of the hearing. Nor does the record disclose the ramifications of this transfer in terms of work location, the 12-hour work schedule or contact with other employees in the petitioned-for unit of power block employees. In these circumstances, as it appears that the status of the ash system operators in relationship to the other petitioned-for employees is in transition, they will be allowed to vote subject to challenge.

The lab technician, who also reports to these same supervisors and is also in the power block plant, is not a 12-hour shift employee and the Petitioner does not seek to represent this individual. However, I find that the lab assistant should also be included in the unit with the other power block employees. Although this employee does not work a 12-hour schedule, he is in regular daily contact with other power block employees and his work is apparently integral to the work that they perform. This employee also has the same supervisors and a comparable rate of pay as other employees in the petitioned-for unit. Therefore, the lab assistant will be included in the unit.

I find that the record establishes that in Case 37-RC-3907, the following unit of employees is an appropriate unit:

All full-time and regular part-time control room operators, turbine operators, boiler operators, air pollution control operators, auxiliary boiler operators, auxiliary air pollution control operators and lab technicians employed by the Employer in its power block plant facility at Kapolei,

Hawaii; excluding all other employees, guards and supervisors as defined in the Act.

In Case 37-RC-3908, the Petitioner seeks to represent a unit comprised of the IC& lead technician and 6 IC&E techriders who report to the results engineer and who work in both the power block and the waste processing plant performing electrical and instrument control work. It appears from the record that the Employer prefers that these employees have an electrical or electronics background and that they undergo an Employer multi-step training program to become electronic technicians. They are the only employees under the results engineer who are not excluded by the parties' stipulations. While the record shows that the IC& lead technician and the 6 IC&E techriders have contact with maintenance employees in working on projects such as pulling wire and that they have contact with the power block and waste processing employees in performing their work, the record does not indicate the frequency of any interchange they have with other employees. Further, the nature of their work, their skills and their separate supervision from other employees supports the conclusion that they share a sufficient community of interest to constitute a separate appropriate unit from the other employees at the Employer's facility. Thus, while the record is not sufficient to support a finding that the IC& lead technician and the 6 IC&E techriders are technical employees, it does establish a sufficient community of interest to warrant their inclusion in a separate unit. See Audiovox Communications Corp., 323 NLRB 647 (1997).

Accordingly, I find that the following unit constitutes an appropriate unit for collective bargaining purposes in Case 37-RC-3908:

All full-time and regular part-time IC&E technicians and IC&E techriders employed by the Employer at its Kapolei, Hawaii, location; excluding all other employees, guards and supervisors as defined in the Act.

## DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted by the undersigned among the employees in the voting groups set forth above at the time and place set forth in the notice of elections to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in each voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Electrical Workers, Local 1260, AFL-CIO**.

## LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v.



Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director of Region 20 who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7318, Post Office Box 50208, Honolulu, Hawaii 96850, on or before September 21, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 28, 1999.

**DATED** at San Francisco, California, this 14th day of September 1999.

/s/ Robert H. Miller

Robert H. Miller, Regional Director  
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